Birmingham. Second, about one year later, Booth was required to connect the Bloomfield system to the Birmingham System and to construct the Bloomfield headend at the site of the Birmingham headend. While the common headend facilities saved certain capital costs, the two systems remained operationally and administratively distinct.

The existing rules consider the two systems as one because of the shared headend. When viewed under the waiver standards established by the Commission, however, the two systems exhibit key small system characteristics. This combined with other factors show that grant of this Petition will serve the public interest.

III. STANDARDS APPLICABLE TO WAIVER OF SMALL SYSTEM SIZE LIMITS

A. The public interest.

The Commission may waive any provision of the rules relating to cable television systems on petition by a cable operator.[12] Generally, the Commission will grant a petition for special relief when it determines that the grant would serve the public interest.[13] In the *Small System Order*, the Commission provided more specific guidance on petitions to waive small system size limits.

B. Relevant factors for waiving small system size limit.

In the *Small System Order*, the Commission stated: "[The Commission] will entertain petitions for special relief from systems who fail to meet the new definitions but are able to demonstrate that they share relevant characteristics with qualifying systems and therefore should

[12] 47 C.F.R. § 76.7(a)(1).

[13] 47 C.F.R. § 76.7(f). See also Insight Communications Company, L.P., *Memorandum Opinion and Order*, DA 95-2334, (released November 13, 1995) ("*Insight Communications*"), ¶¶ 4, 23, 25, and 33.

be entitled to the same regulatory treatment."[14] The Commission specified several relevant factors to consider in assessing petitions to waive the small system size limits. These factors include:

1. Evidence of increased costs faced by the operator.[15]

2. The degree by which the system shares defining characteristics of small systems including:

    a. Average monthly regulated revenue;[16]
    b. Subscriber density;[17]
    c. Average annual premium revenue per subscriber per channel;[18] and
    d. Lack of access to purchasing discounts.[19]

3. If segments of the integrated cable operation would be subject to different regulatory structures.[20]

4. The degree by which the system varies from the standard.[21]

The Commission indicated that the above relevant factors do not constitute an exhaustive list; the Commission will consider other information as well.[22]

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[14]*Small System Order* at ¶ 36.

[15]*Id.*; *Insight Communications* at ¶ 28.

[16]*Small System Order* at ¶ 27.

[17]*Id.*

[18]*Id.*

[19]*Id.* at ¶ 36.

[20]*Id.* at ¶ 35; *Second Order on Reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-38 (released March 30, 1994) at ¶ 227.

[21]*Small System Order* at ¶ 27; *Insight Communications* at ¶ 28.

[22]*Small System Order* at ¶ 36; *Insight Communications* at ¶ 28.

As shown below, when considered together, the Birmingham and Bloomfield systems satisfy most of the relevant standards except the 15,000 subscriber limit. Moreover, other relevant factors show that operationally and administratively the two systems are very separate, which imposes substantial additional costs on already higher cost systems. Consequently, the grant of this Petition will serve the public interest by providing regulatory relief to a small cable company that would otherwise be excluded by a strict numerical test.

IV. ANALYSIS

A. Booth American satisfies the definition of a small cable company.

As a threshold issue, systems operated by Booth American may be entitled to small system relief because Booth American falls well within the definition of a small cable company. The company serves less than 142,000 subscribers company-wide, well below the 400,000 subscriber limit established in the *Small System Order.*[23] Annualized 1995 revenue from regulated services totals $38.8 million, far less than the $100 million threshold referenced in the *Small System Order.*[24] This case does not implicate affiliation issues because members of the Booth family hold all the stock in the corporation, Booth American or wholly-owned subsidiaries manage all of its systems, and no larger cable company exercises *de jure* control over Booth American systems.[25] Consequently, Booth American's subscriber base of under 142,000 "clearly establish[es] its need for, and entitlement to, the small system rate relief."[26]

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[23]*Small System Order* at ¶ 28.

[24]*Id.* at ¶ 29.

[25]*Id.* at ¶ 36, n. 88.

[26]*Insight Communications* at ¶ 24.

It is also noteworthy that nearly all of Booth American's systems automatically qualify for small system relief. Besides the combined Birmingham and Bloomfield systems, only one other cable system operated by Booth American exceeds 15,000 subscribers.[27]

B. Considered separately, both the Birmingham and Bloomfield Systems satisfy the definition of a small cable system.

But for the shared headend, both the Birmingham System and the Bloomfield System would be automatically eligible for small system rate relief. The systems serve 10,660 and 13,635 subscribers respectively. Each of the systems shares the attributes of a typical small system that convinced the Commission to ease regulatory burdens on small operators - low subscriber density, higher costs, and no affiliation with a larger entity.[28] System size is at issue for these two systems only because of headend linkage, a linkage mandated by the Bloomfield System Franchise. As discussed below, even when considered together, the systems share key small system characteristics that warrant small system treatment.

C. Considered together, the Birmingham and Bloomfield Systems reflect key small system characteristics.

Considered together, the Birmingham and Bloomfield systems still reflect key small system characteristics. These characteristics include low subscriber density, higher costs, and the need for relief from administrative burdens and costs. While the combined Birmingham and Bloomfield Systems exceed 15,000 subscribers, small system treatment will reflect the historical operation and administrative separation of the systems and will serve the public interest by

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[27]Booth American's High Desert System in Victorville, California serves about 31,000 subscribers.

[28]*Small System Order* at ¶ 25-32 and 55-56.

providing regulatory relief to a small cable company incurring substantially higher costs in providing regulated cable services. Six relevant factors supporting this relief are discussed below.

1. Subscriber density.

The Birmingham and Bloomfield Systems serve relatively low-density suburban and rural communities. This results in the higher fixed and variable costs associated with constructing and operating a system that serves fewer subscribers per mile. Lower subscriber density was a factor specifically relied upon by the Commission in establishing the threshold for small system relief.[29] Average subscriber density for the Birmingham System is 46 subscribers per mile. Average subscriber density for the Bloomfield System is 28 subscribers per mile. When considered together, average subscriber density for the two systems is 31 subscribers per mile. This is 13% less than the average density for small systems identified in the *Small System Order* and less than half of the average density for larger systems.[30]

2. Higher costs.

a. Higher costs of a small cable company.

Booth American's cost structure reflects that of a small cable company serving less than 142,000 subscribers. Booth American does not benefit from programming discounts enjoyed by larger MSOs. In *Insight Communications*, the Commission granted small system size waivers for three Insight Systems even though Insight benefitted from programming discounts due to its

[29] *Id.* at ¶ 27; *Insight Communications* at ¶ 31.

[30] *Small System Order* at ¶ 27 ("the average number of subscribers per mile is 35.3 for systems with fewer than 15,000 subscribers and 68.7 for systems with more than 15,000 subscribers").

affiliation with Continental Cablevision.[31] Booth American has fewer subscribers than Insight and does not benefit from any reduction in programming costs beyond that offered to a similar size company. Consequently, Booth American's cost structure is almost certainly higher than Insight's, despite any deviation from the size standard if the Birmingham and Bloomfield Systems are considered together.

b. Booth American has been forced to absorb substantially higher license fees for the Birmingham and Bloomfield Systems.

An additional higher cost factor involving the Birmingham and Bloomfield Systems is directly related to Booth American's small company size. Booth American originally constructed and operated the Birmingham and Bloomfield Systems in a partnership with Heritage Communications, an affiliate of Tele-Communications, Inc. ("TCI"). Heritage/TCI sold its interest in the systems to Booth American in January 1993. This business decision by the nation's largest MSO suggests further that the two systems are small systems that did not fit with the business plans of a large cable company. Before the sale, the systems benefitted from the substantial license fee volume discounts offered by programmers to TCI and its affiliates. These discounts ceased in January 1993. Immediately, Booth American's license fees attributed to regulated services increased by 34%.

Because of the timing of both the acquisition and the certifications of the consortia to regulate basic rates,[32] Booth American could not pass through the increase in licensing fees.[33]

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[31] *Insight Communications* at ¶¶ 21-22.

[32] The Birmingham System certified to regulate basic rates in December 1993. The Bloomfield System certified in November 1993. CPS tier complaints involving both systems were also filed at this time.

Consequently, Booth American has had to absorb these increased costs. Booth American estimates that the total cost increase has exceeded $750,000 over three years.

3. Operational and administrative separation of the systems.

Another important factor for the Commission to consider is the operational and administrative separation of the two systems. Except for the shared headend facilities required by the Bloomfield franchise, Booth American operates the Birmingham and Bloomfield systems as distinct and separate systems with attendant higher costs. The systems have been effectively separate since inception due to entirely distinct construction schedules and system requirements. The systems remain separate due to different franchise obligations imposed by the two LFA consortia. Several aspects of this costly structural separation of the two systems are discussed below.

a. Booth American built the two systems under different construction requirements and specifications.

The systems have been treated separately from the outset. The franchises for the Birmingham system became effective on April 12, 1982. Construction began immediately in the Villages of Beverly Hills, Bingham Farms and Franklin, and in the City of Birmingham.

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[33] *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket 92-266, FCC 93-177. (Released May 3, 1995) ("*Rate Order*") at ¶ 255. ("We determine that for all categories of external costs other than franchise fees, the starting date for measuring changes in external costs for which the basic service per channel rate may be adjusted will be the date on which the basic service tier becomes subject to regulation or 180 days after the effective date of our regulations adopted in this Report and Order, whichever occurs first. Any prior changes in costs will not receive external treatment.")

The construction timetable and system specifications were strictly dictated by the Birmingham System Franchise.[34] The Birmingham System commenced operations on September 1982.

The franchise for the Bloomfield System became effective August 30, 1983. Construction then began in accordance with the construction schedule and specifications of the Bloomfield franchise.[35] The Bloomfield System began operations on June 1984.

b. The two systems require significant and costly differences in PEG access and local origination programming.

Booth American's PEG access and local origination programming obligations for the Birmingham and Bloomfield Systems show significant and costly differences.

The Birmingham System Franchise requires three PEG channels and two local origination channels.[36] Booth American must also contribute up to $50,000 annually to subsidize equipment and facility purchases <u>for the Birmingham System only</u>.[37] In addition, Booth American must provide a fully equipped studio and a mobile cablecasting van at no charge to public access users.[38] The Birmingham franchise requires Booth American to maintain and replace these facilities and equipment to the state of the art.[39] Booth American must also

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[34]Exhibit 8, Birmingham System Franchise, Section 6 Construction Timetable, Section 15 System Design.

[35]Exhibit 9, Bloomfield System Franchise, Section 4 Construction and Service Requirements.

[36]Exhibit 1, Birmingham System Franchise, Section 23, Public Access, Section 24 Local Origination Programming, Exhibit B Program Offerings.

[37]Exhibit 1, Birmingham System Franchise, Section 23(b).

[38]Exhibit 1, Birmingham System Franchise, Section 23(d) and Exhibit E Access Equipment.

[39]Exhibit 1, Birmingham System Franchise, Section 23(d).

provide similar facilities and equipment for local origination programming.[40] Booth American must also bear the substantial costs of providing six full-time employees and three part-time employees dedicated to operating and coordinating PEG access and local origination programming.[41] These costs impose substantial economic, operational and administrative burdens upon Booth American. As shown below, due to the different requirements of the respective consortia, Booth American cannot benefit from the economies of scale that it could if the two linked systems were actually one system.

The Bloomfield System Franchise requires up to 13 PEG access and local origination channels.[42] Like the Birmingham System, the Bloomfield System requires costly PEG and local origination facilities.[43] Instead of consolidating usage of facilities and equipment with Birmingham, however, the Bloomfield System handles the requirements differently. The Bloomfield System requires cash payments of about $147,000 annually to provide for and operate PEG access and local origination facilities <u>for the Bloomfield System only</u>.

These separate requirements at least double the cost to Booth American of providing such services to the two systems. If the two systems were actually operated as one system, Booth American would realize substantial cost savings by combining PEG access and local origination facilities. Due to franchise obligations that effectively establish two systems, Booth American must absorb much higher costs.

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[40]Exhibit 1, Birmingham System Franchise, Section 23(d) and Exhibit F Local Origination Equipment.

[41]Exhibit 1, Birmingham System Franchise, Section 25 Access and Local Origination Personnel.

[42]Exhibit 3, Bloomfield System Franchise, Section 6.2 Basic Subscriber Television Services.

[43]Exhibit 3, Bloomfield System Franchise, Section 5.5 Cablecasting Facilities.

c. The two systems require significantly different and costly I-Nets.

Franchise mandated I-Nets represent another set of separate and costly characteristics of the two systems. Both franchises mandate separate I-Nets.[44] Each I-Net is unusually extensive for a small system. For the Birmingham System, Booth American must support a 42 channel I-Net serving at least 37 separate facilities in four communities.[45] For the Bloomfield System, Booth American must provide and maintain a full capacity system serving no less than 88 facilities spread through the City of Bloomfield and rural Bloomfield Township.[46] The separate I-Nets add substantially to Booth American's operating costs and greatly increase the investment required to upgrade the systems. The separate I-Net requirement further demonstrates the operational separateness of the two systems and the higher costs that result.

d. The two systems require separate administration and operation.

Booth American must treat the systems as administratively separate as well. Each system requires the submission of system-specific annual reports. Consequently, Booth American has always incurred the costs of preparing and submitting separate annual reports. Each system also requires the submission of system-specific audited financial statements. Consequently, Booth American has always incurred the costs of maintaining separate books of accounts for the two systems and submitting separate financial statements for the two systems. In addition, maintaining relations with two independent consortia requires at least double the person-hours for meeting participation, correspondence and other franchise authority servicing functions.

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[44]Exhibit 2, Birmingham System Franchise, Section 22 Institutional Network and Exhibit D Facilities to be served on the Institutional Network; Exhibit 4; Bloomfield System Franchise, Exhibit B.

[45]Exhibit 2.

[46]Exhibit 4.

Operationally, programming offerings, marketing plans and rates for regulated services differ as well. Again, this adds to the costs of operating two high cost systems that would automatically receive small system relief but for a shared headend.

e. The franchise obligations were undertaken when Booth American was affiliated with a large cable operator.

When weighing the importance of the additional costs imposed by separate franchise requirements, the Commission might also consider Booth American's prior affiliation with Heritage/TCI. When the franchise obligations were undertaken, Booth American had the benefit of programming cost savings and the availability of lower-cost capital due to its affiliation with Heritage/TCI. Heritage/TCI sold its interest in the systems to Booth American in 1993. Since then, the programming discounts are unavailable because Booth American is a small cable company. Moreover, Booth American no longer has access to the capital markets available to large cable companies. This increases the costs of maintaining and upgrading the extensive and separate PEG access and I-Net facilities required by the two systems. Consequently, Booth American faces much higher costs due to its status as a small cable company. Lack of programming discounts and access to sophisticated capital markets are specific reasons that the Commission crafted rate relief in the *Small System Order*.[47] Precisely because of these reasons, Booth American needs small system relief for the Birmingham and Bloomfield systems.

4. Small system treatment will not lead to segmented regulation.

Booth American recognizes that the Commission has held firm on the basis for measurement of a small system: subscribers served by the principal headend.[48] This Petition

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[47]*Small System Order* at ¶ 28.

[48]*Id.* at ¶ 35.

is not directly seeking a waiver of this rule. Nonetheless, Booth American suggests that a relevant factor for the Commission's consideration in this case is the stated justification for maintaining the principal headend standard.

> To use a franchise area definition would result in some segments of a single integrated cable operation being subject to a different regulatory structure than other segments of the same operation.[49]

Such regulatory segmentation will not occur in the Birmingham and Bloomfield Systems if this Petition is granted. Both systems and all six LFAs will benefit from streamlined small system cost-of-service regulation. Moreover, Booth American is not seeking to have the systems defined by franchise area. Rather, Booth American seeks small system status for two multi-franchise systems linked by headend facilities, two systems that have always required costly operational and administrative separation.

5. Regulated and premium revenues.

An analysis of regulated and premium revenues for the Birmingham and Bloomfield Systems does not readily reflect small system attributes. When viewed in context with other factors, however, revenue analysis should not weigh against the other small system characteristics of the systems.

For the Birmingham and Bloomfield Systems, monthly regulated revenues per subscriber per channel are $0.43 and $0.48, respectively. Average annual premium revenues per subscriber are $73.29 and $91.66 respectively. Viewed in isolation, these numbers shade more toward the averages for large systems than small systems.[50]

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[49] *Id.*; *Second Order on Reconsideration, Fourth Report and Order, Fifth Notice of Proposed Rulemaking*, MM Docket No. 92-266, FCC 94-30 (released March 30, 1994) at ¶ 27.

[50] *Small System Order* at ¶ 27.

Two additional considerations help to properly interpret these numbers. First, the Birmingham and Bloomfield Systems remain higher cost systems for the reasons discussed above. Lack of programming discounts and other reasons contribute to squeezing margins on regulated and premium services. Higher levels of premium revenues in this case do not equate to higher profits that could sustain the additional burdens and costs of large system rate regulation. Additionally, the higher volume of premium services reflects the generally more affluent middle- to upper-middle class population of suburban Detroit. Generally, such households are more likely initially to order premium services. Still, Booth American has experienced steady decline in premium service volume and revenues since 1990. With DBS and other competition, Booth American expects this trend to continue.

As in *Insight Communications*, this one factor that shades toward a large system characteristic need not prevent Booth American Company from obtaining small system relief for the Birmingham and Bloomfield systems.[51]

6. **Relief from administrative burdens and costs.**

Booth American highlights one remaining relevant factor weighing in favor of the grant of this Petition. The Birmingham and Bloomfield Systems serve six LFAs organized into two independent consortia. Each has certified to regulate basic rates. Booth American is currently mapping and designing major fiber rebuilds of the systems. Improvements will increase the capacity of the systems to 750 MHz and support 110 analog channels with sufficient fiber to average 500 homes per node. The capital investment associated with this rebuild combined with

[51] *Insight Communications* at ¶ 31, n. 55 ("The third Insight system, Jeffersonville, has a subscriber density comparable to that of larger systems. However, this appears to be the only way in which the Jefferson system resembles a larger system.")

already high operating costs would require Booth American to establish going forward rates under cost-of-service. As recognized by the Commission, however, the administrative costs and burdens of cost-of-service showings under interim cost-of-service rules impose a significant economic disincentive on small cable companies like Booth American.[52] Moreover, as the Commission is well aware, Ameritech is actively developing cable systems in suburban Detroit. Direct broadcast satellite systems are penetrating the area as well. To compete with DBS and a massive RBOC/cable operator, Booth American will require relief from the disproportionate burdens and costs of large system regulation.

D. The public interest will be served if the Birmingham and Bloomfield Systems are granted small system status.

The Commission provided the regulatory relief in the *Small System Order*, in part, "to expand the category of small systems and provide them rate and administrative relief [and] also ease burdens for local franchising authorities and the Commission, in furtherance of congressional intent."[53] Booth American and its Birmingham and Bloomfield Systems need and will benefit from that relief. Viewed separately, these are small systems serving higher cost, suburban and rural areas. Regulatory restrictions on passing through significantly higher programming costs from 1993 exacerbates the cost problem. Viewed separately, these systems automatically qualify for small system treatment. Due to franchise mandated headend linkage, however, absent a grant of this Petition, Booth American must bear the administrative burdens and costs of large system regulation for two systems that it must treat as operationally and

[52]*Small System Order* at ¶ 55.

[53]*Small System Order* at ¶ 26.

administratively separate. Although, when considered together, the systems exceed the size standard, the systems still require small system relief to establish reasonable rates. Booth American needs rate relief for these systems just like it does for its other systems, all but one of which automatically qualifies. The LFAs that regulate basic rates in the systems will also benefit from the reductions in administrative burdens offered by the Form 1230 rate regulation process. Consequently, it will serve the public interest to grant this Petition.

V. CONCLUSION AND REQUESTED RELIEF

Booth American and its Birmingham and Bloomfield Systems meet key small system criteria and reflect several factors warranting small system rate relief. For the reasons stated above, Booth American requests that the Commission grant small system status for the Birmingham and Bloomfield Systems.

BOOTH AMERICAN COMPANY

By: ______________________

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CERTIFICATION

I am Laura Petterle, Director of Operations for Booth American Company. I certify that I have read the attached Petition for Special Relief, that I am generally familiar with the matters contained and understand the purpose of the document, and that the factual statements set forth are correct to the best of my knowledge, information and belief.

Dated: 12/1/95

Laura Petterle

Laura Petterle

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CERTIFICATE OF SERVICE

I, Ida Buntin, a secretary at the law firm of Howard & Howard Attorneys, P.C., hereby declare that the Booth American Company Petition for Special Relief was sent on the 1st day of December, 1995 by first class and certified mail, return receipt requested and postage prepaid, to the following:

Mr. George Majoros
Village of Beverly Hills
Beverly Hills Village Hall
18500 West 13 Mile Rd
Beverly Hills, MI 48025

Mr. Tom Marcus
City of Birmingham
Birmingham City Hall
P.O. Box 3001
Birmingham, MI 48012

Ms. Kathy Marorta
Village of Bingham Farms
Bingham Farms Village Offices
30400 Telegraph Rd Ste 328
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Mr. Charles Harmon Jr.
City of Bloomfield Hills
Bloomfield Hills City Hall
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Bloomfield Hills, MI 48304-2322

Mr. Fred Korzon
Township of Bloomfield
PO Box 489
Bloomfield Hills, MI 48303-0489

Ms. Kathy Marorta
Village of Franklin
32325 Franklin Village Hall
Franklin, MI 48025

The undersigned further declares that on the 1st day of December, 1995 the above-referred to document was sent via facsimile and Federal Express to:

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

and that in a second Federal Express envelope directed to Chairman Reed Hundt ten individual envelopes were sent, each containing a copy of the above-referred to document and a copy of the December 1, 1995 letter directed to Mr. Caton. The ten envelopes were addressed as follows:

Ms. Meredith Jones
Chief
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
Washington DC 20554

Mr. Gregory Vogt
Deputy Chief
Cable Services Bureau
Federal Communications Commission
1919 M Street NW
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Chairman Reed Hundt
c/o Mr. John Nakahata
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Commissioner Andrew Barrett
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Dated: December 1, 1995

Ida Buntin

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A G R E E M E N T

AN AGREEMENT GRANTING A NON-EXCLUSIVE FRANCHISE TO BOOTH COMMUNICATIONS OF BLOOMFIELD TO OPERATE A CABLE TELEVISION SYSTEM IN THE CITY OF BLOOMFIELD HILLS AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THE FRANCHISE.

4. CONSTRUCTION AND SERVICE REQUIREMENTS

4.1 General. The Grantee shall meet or exceed all the material construction and service requirements set out in this Franchise Agreement and in addition shall meet or exceed those material service requirements set out in Grantee's franchise application. The Grantee shall meet the service requirements regardless of whether subscriber penetration and/or revenue projections contained in the application prove to be correct. It is the Grantor's intent that Grantee shall not be penalized for minor breaches of the terms hereof so long as its best efforts are maintained.

4.2 Construction Schedule. Grantee shall complete system construction and accomplish full activation of the system within eighteen (18) months after the date of the execution of this Agreement. Grantee anticipates a period of six (6) months after the effective date of the franchise will be sufficient to negotiate pole line attachment agreements with the utility pole owners and to acquire all necessary permits and clearances necessary to begin construction. Grantee shall complete construction and activation of the system and offer cable service to all residents in accordance with the requirements of Exhibit A.

Consistent with sound engineering practice, construction shall be essentially concurrent in all areas of the City, so that no geographic portion of the City is discriminated against in receiving prompt service, it being understood, however, that as the system is being built it will be activated in increments of not more than 25 miles each.

Cable service shall be offered to all residents and institutions within an area no later than ninety (90) days after the cables have been activated therein.

4.3 Liquidated Damages for Delay in Construction. Grantor may at its sole option apply any of the remedies specified in Article X, Sec. 1 of Ordinance No. 184 in connection with delays in system construction due to causes which are within Grantee's reasonable control or which are reasonably foreseeable.

In addition, if, after six (6) months of the effective date of the franchise, Grantee has not commenced construction and Grantee does not commence construction within thirty (30) days of written notice of such failure from Grantor, subject to the procedural provisions of Section 10.2, Grantor may be entitled to financial liquidated damages not to exceed Five Thousand Dollars ($5,000.00) per day for each day the Grantee fails to initiate construction.

Grantee shall make a good faith and diligent effort to obtain all necessary permits and clearances. Within two (2) months after the effective date of this franchise, Grantee shall report to Grantor its estimate of the initial construction date. The initial construction date estimated after two (2) months may be used by Grantor as the presumptive construction starting date, with all construction requirements based on that date provided, however, that Grantee may adjust its estimated initial construction date upon a showing of delays which are beyond its reasonable control or which are not reasonably foreseeable.

For any schedule delay that may occur, the burden of proof shall be on the Grantee to demonstrate that such delay was beyond its reasonable control or was not reasonably foreseeable. The imposition by Grantor of such damages shall be in accordance with the procedures set forth in Section 10.2 hereof.

4.4 Right of Inspection of Construction. Grantor shall have the right to inspect all construction or installation work performed subject to the provisions of this franchise and to make such tests as it shall find necessary to ensure compliance with the terms of the franchise and other pertinent provisions of law.

4.5 Provision of Residential Service. Subject to the provisions of Sections 8.3, 8.7, 8.8 and Exhibit B hereof, Grantee shall provide all residential services to all residents of the City at uniform installation charges and monthly rates, within the schedules of Section 4.2 above. New residences in active cable areas shall be offered service within ninety (90) days after occupancy.

4.6 Construction Cost. Grantee has estimated in its franchise application that the construction cost of the cable television system that will serve the Township of Bloomfield and the City of Bloomfield Hills during the initial construction period will be Seven Million Twenty-Three Thousand Dollars ($7,023,000).

Grantor and Grantee jointly acknowledge that Grantee's projected investment was a factor in the evaluation of its franchise application and may be used to determine if the quality and capability of the constructed system are consistent with the proposed system. Grantee agrees to provide such equipment and services as were proposed in its application or the equivalent thereof. In the event that equivalent equipment or services are proposed, the Grantor shall be given thirty (30) days advance notice thereof with appropriate explanations therefor. Grantor's approval of such proposals shall not be unreasonably withheld and its decision shall be given to Grantee, in writing, within thirty (30) days of receipt of Grantee's notification.

4.7 Inspection Costs. Grantee agrees to pay the reasonable costs of nonrecurring requirements for inspection of subscriber house drops and/or other portions of the cable system distribution network, during the system's construction period.

5. SYSTEM DESIGN AND PERFORMANCE REQUIREMENTS

5.1 System Configuration. The cable television system shall consist of at least two interconnected networks: a residential, or "A" Cable, network and an institutional, or "B" Cable, network. Both networks shall provide activated bi-directional communications capability in their initial configurations.

5.2 Channel Capacity. The cable television system shall be installed to deliver signals at frequencies up to four hundred forty (440) megahertz (MHz), with specific capacity as indicated below.

Cable Network	Signal Direction	Signal Frequency Range	Channel Capacity
Residential (A1)	Outbound	50-440 MHz	60+FM band
Residential (A1)	Inbound	5-30 MHz	4+data
*Residential (A2)	Outbound	50-440 MHz	60+FM band
*Residential (A2)	Inbound	5-30 MHz	4+data
Institutional (B)	Outbound	228-400 MHz	35
Institutional (B)	Inbound	5-174 MHz	27

* The underground plant will be initially installed with a complete second shadow trunk and feeder cable. At the time of activation for the second cable, Grantee will overlash throughout the aerial sections of the system to provide dual cable service. Activation of the underground shadow plant and construction of the second aerial cable shall be in accordance with the procedures set forth in Article VI, Section 3 of Ordinance 184.

5.3 Satellite Earth Stations. Grantee shall provide two (2) satellite earth stations initially [one (1) single signals and one (1) multiple signal type, both located at the Grantee's cable system facility in Birmingham, Michigan]. Grantee shall reasonably provide a sufficient number of earth stations to receive signals from all operational communications satellites that generally carry programs carried by cable systems, throughout the life of the franchise.

5.4 Capacity for Interactive Residential Services. Grantee shall provide initially the capability for interactive residential services including, but not limited to, impulse pay-per-view, one-way pay-per-view, opinion polling, security service and video games. Grantee shall also provide the capacity for energy management, electronic banking, videotext, data base access, electronic mail, interactive games and data networking services, with such services to be added within two (2) years of the effective date of this Agreement or within one (1) year of the first introduction of such service on an operational basis in Southeastern Michigan whichever occurs later. All customer equipment necessary for such services, such as addressable interactive converters, home terminals and home detectors, shall be provided to subscribers by Grantee in accordance with established and uniform rate schedules.

5.5 Cablecasting Facilities. Grantee shall provide the following cablecasting facilities or their equivalent for the cable system serving the Township of Bloomfield and the City of Bloomfield Hills, at the estimated costs shown: